

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #13	CCRB Case #: 201708303	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/10/2017 1:29 PM	Location of Incident: Park Avenue and East 161st Street	Precinct: 44	18 Mo. SOL 4/10/2019	EO SOL 4/10/2019	
Date/Time CV Reported Tue, 10/10/2017 1:30 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/10/2017 1:30 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Diaz	28347	940091	044 PCT
2. POM Jose Gonzalez	11703	941830	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Boyer	21350	959502	044 PCT
2. POM William Fernandez	03456	959633	044 PCT
3. POF Marycather Nashlenas	23091	959839	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Diaz	Abuse: Police Officer Daniel Diaz searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via phone on October 10, 2017.

On October 10, 2017, at approximately 1:29 p.m., § 87(2)(b) and her boyfriend, § 87(2)(b) were pulled over in § 87(2)(b)'s vehicle by PO Daniel Diaz, of the 44th Precinct, for excessive tints. During the stop, PO Diaz searched § 87(2)(b)'s vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) the driver of the vehicle, was arrested and issued a Desk Appearance Ticket (DAT) for § 87(2)(b), and was also summonsed for § 87(2)(b) as a result of this incident.

§ 87(2)(b) filmed a portion of this incident with her cell phone. The video footage was edited via Snag-It and is embedded below (Board Review 01).

§ 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Daniel Diaz searched the vehicle in which

§ 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that PO Diaz searched § 87(2)(b)'s vehicle, and that he had informed § 87(2)(b) that he was doing so under his belief that he observed a firearm inside. It is further undisputed that § 87(2)(b) had already been placed in the police vehicle by the time the search was conducted.

§ 87(2)(b) who was standing on the passenger's side of the vehicle, alleged that PO Diaz opened the rear driver's side door and searched the driver seat's back pocket, § 87(2)(b)'s handbag, a plastic bag that contained makeup and beauty supplies, the driver's seat, and the center console. § 87(2)(b) denied that either of the bags contained an item resembling a gun (Board Review 02).

A statement from § 87(2)(b) could not be obtained because he was uncooperative with the investigation (See IAs).

§ 87(2)(b) an independent witness of this incident, alleged that she observed two officers searching § 87(2)(b)'s vehicle, with one officer searching the backseat on the driver's side and the other officer searching the backseat on the passenger's side. She could not see what specifically was searched because she stood approximately 20 or 30 feet away, and was unsure whether the front seat area of the vehicle was searched (Board Review 03).

§ 87(2)(b)'s cell phone video of this incident, which is one minute and two seconds long, shows PO Diaz leaning into the rear driver's seat of the vehicle and reaching into a plastic bag. He pulls out a small black pouch, conducts a visual inspection of the plastic bag's interior, and then places the pouch back inside the bag. PO Diaz then puts the plastic bag down, exits the vehicle, and then re-enters the vehicle through the front driver's side door. PO Diaz then reaches underneath the driver's seat with his arm and conducts a visual search of the center console (Board Review 01).



201708303_20171116_1154_DM.mp4

PO Diaz testified that he asked § 87(2)(b) for his license and registration, at which time he began shuffling through a shopping bag. PO Diaz observed a black object inside of the bag, in the shape of an upside down "L," which he believed to be the butt of a firearm. He further noted that he had observed grooves on the object, similar to the kind that manufacturers put on weapons, and that § 87(2)(b) expressed a wide-eyed, suspicious look about why he was

stopped. While sitting inside of his police vehicle, parked behind § 87(2)(b)'s vehicle, PO Diaz observed, through the "very darkly tinted" rear windshield, § 87(2)(b) and § 87(2)(b) moving around the center console and the interior of the vehicle. However, PO Diaz denied recalling either individual reaching towards any specific area aside from the center console and noted that there was nothing about their movements that indicated criminality. Upon returning to § 87(2)(b)'s vehicle and having placed § 87(2)(b) in the police car and under arrest for a suspended license, PO Diaz stuck his head into the front of the vehicle and looked around the reachable areas. He then looked inside of the shopping bag he previously had observed, and saw that the object he believed to be a firearm was, in fact, an adapter for an electronic device, describing it as a black, "square-ish, smallish rectangle." PO Diaz denied searching anywhere else in the vehicle after identifying the object to be an adapter. When presented with video footage showing him re-entering the vehicle after searching the bag and reaching underneath the driver's seat, PO Diaz testified that he took this action because he believed there could have been a weapon there since it was generally an area where a weapon could be stored, but confirmed the only suspicious object he had seen was the adapter not underneath the seat. PO Diaz added that the movements of both § 87(2)(b) and § 87(2)(b) during the stop led him to search underneath the seat, but he did not recall either individual reaching towards any other specific area aside from the center console (Board Review 04).

PO Gonzalez, who arrived on scene as a backup officer, testified that PO Diaz had informed him upon his arrival that he observed an object which he believed to be a weapon inside of a bag in the vehicle. PO Diaz then searched a bag located in the rear driver's seat of the vehicle, but PO Gonzalez denied seeing PO Diaz search any additional areas in the vehicle (Board Review 12).

When there is probable cause to believe that contraband is concealed within a compartment or container inside of a vehicle, officers can search the areas of the vehicle in which there is probable cause to believe that the contraband may be found. People v. Langen, 60 N.Y.2d 170 (1983). Police may search a vehicle incident to an occupant's arrest only if it is reasonable to believe the vehicle contains evidence of the offense of arrest. Arizona v. Gant, 556 U.S. 332 (2009) (Board Reviews 05 and 06).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

It is undisputed that PO Gonzalez was present during the stop of § 87(2)(b)'s vehicle. However, PO Gonzalez stated in his CCRB interview that he did not have any memo book entries regarding this incident. Additionally, his memo book from October 10, 2017 confirms that there are no entries regarding this incident (Board Reviews 12 and 13).

Police officers are required to record assignments received, information pertinent to an assignment, and tasks performed. NYPD Patrol Guide, Section 212-08 (Board Review 14).

Because PO Gonzalez acknowledged arriving on scene and providing assistance to PO Diaz during the stop and search of § 87(2)(b)'s vehicle, these law enforcement actions should have been noted in his memo book.

Since PO Gonzalez failed to prepare a memo book entry for this incident as required, it is recommended that PO Gonzalez be cited for **other misconduct**.

Mediation, Civil, and Criminal Histories

- This case was eligible for mediation, but § 87(2)(b) declined to mediate.
- According to Office of Court Administration (OCA) records, § 87(2)(b) does not have a history of criminal convictions within New York City (Board Review 07).
- According to OCA records, § 87(2)(b) has three prior convictions in the City of New York in the past ten years, including two convictions for criminal trespassing in the second degree (Board Review 08).
- As of January 16, 2018, neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim against the City of New York regarding this incident (Board Review 09).

Civilian and Subject Officer CCRB Histories

- § 87(2)(b) has two prior complaints, both of which were referred to outside agencies (Board Review 10).
- § 87(2)(b) does not have any prior CCRB complaints (Board Review 11).
- PO Diaz has been a member of the NYPD for 12 years. PO Diaz has been the subject of 15 prior allegations stemming from 11 cases. There has been one substantiated allegation against PO Diaz from Case #201605109 for excessive force, in which the CCRB recommended Command Discipline B. PO Diaz ultimately received no penalty from the NYPD. PO Diaz's CCRB history does not indicate a pattern applicable to this case.

Squad: 13

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date